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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.C., a Person Coming Under
the Juvenile Court Law.

B287595
(Los Angeles County
Super. Ct. No. DK24394A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Kim L. Nguyen, Judge. Reversed in part and dismissed in part.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristen P. Miles, Acting Assistant County Counsel, and Timothy M. O’Crowley, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

I.C. (father) appeals from the juvenile court’s jurisdictional finding that he violated Welfare and Institutions Code section 300, subdivision (b)¹ by engaging in domestic violence with the mother of his seven-year-old daughter V.C.² He also appeals from the juvenile court’s finding that release of V.C. to father would be detrimental to V.C. and the court’s order requiring father to participate in individual counseling and monitored visitation with V.C. We reverse the jurisdictional and detriment findings and the individual counseling order and dismiss the appeal from the monitored visitation order.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father met in 2003 while they were undergoing rehabilitation for methamphetamine use. V.C. was born in November 2009. Mother and father separated in 2011. By July 2017, seven-year-old V.C. lived with mother and maternal grandmother in Pasadena, California. Father worked a lot and V.C. saw him as much as she could.

On July 22, 2017, at the end of a visit, father took V.C. to mother’s home. While father was in mother’s home, he observed

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² V.C.’s mother, V.G. (mother), is not a party to the appeal.

methamphetamine in powder form inside the child's room, out in the open and accessible to the child. Father also saw bottles of liquor, beer and wine and cigarette butts all over the room. Although mother denied the methamphetamine belonged to her, father suspected mother was under the influence of methamphetamine. A few months earlier, mother had admitted to father that she was using methamphetamine. Father suspected that mother's boyfriend, who lived in the home, also used methamphetamine. Father called law enforcement. The officer who came to the home did not find methamphetamine because mother removed it.

That same day, mother slapped, scratched, and poked the maternal grandmother's face and threw food at her. V.C. witnessed the incident.

Rather than leaving V.C. with mother, father brought her to the home of the paternal grandmother in Visalia, in Tulare County. V.C. arrived at paternal grandmother's home with soiled clothing, lice, and wearing diapers. She appeared nervous or anxious. Although she was given her own bedroom, she chose to sleep with paternal grandmother.

Father contacted the Los Angeles County Department of Children and Family Services (Department) and reported on the family's situation. He asked that a Department social worker contact him so V.C. could meet with a social worker. Father said he would pick up V.C. from paternal grandmother's home whenever the social worker was willing to meet with the family.

On August 1, a social worker spoke with mother. Mother initially said she had not used "crystal" in over a year, but she subsequently admitted she had used "meth" the day before, when she was partying with friends. The social worker also reported:

“Mother stated that she has a history of [domestic violence] with [father] who hit her. She stated that she has been choked in front of her daughter.” According to mother, she and maternal grandmother had had some disputes and she had thrown food on the floor in front of maternal grandmother but not at her.

The next day, mother submitted to an on-demand drug test and the results were positive for amphetamine and methamphetamine.

On August 3, father told the social worker that he and mother separated six years earlier because mother was aggressive and he was afraid he would hit her.³ Father said he would have V.C. live with him but he had two jobs, including one at night, he had a roommate, and he did not have adequate space. He believed the safest place for his daughter was the home of paternal grandmother in Visalia.

The social worker also interviewed maternal grandmother, who said she was scared of mother and suspected mother was using drugs. Maternal grandmother stated mother had a boyfriend who smoked marijuana and both mother and the boyfriend were drinking. Maternal grandmother reported that mother had pulled her hair in the past because maternal grandmother intervened when mother was pulling V.C.’s hair. Maternal grandmother called father when the incidents happened.

On August 14, social workers interviewed V.C. at school in Visalia and found her clean, healthy, and appropriately dressed

³ The Department states father “admi[tte]d that he was afraid he might hit the mother *again*.” (Emphasis added.) The record shows father stated only that he was afraid he would hit mother.

for the weather. V.C. told the social workers a “gangster guy” had moved in with mother and mother “hangs out with gangsters.” She said that one day when father dropped her off at mother’s house, the bedroom door was locked and “the guy” was in there. When V.C. banged on the door, mother opened the door, “pushed her,” and shut the door. Mother then came out of the room with “a guy.” Father told mother not to push V.C. Mother and father argued and “the guy tried to fight” father. Father did not want to argue in front of V.C. and instead called the police. When the police came they did not find drugs in the home because mother “hid everything.”

V.C. also told the social workers that mother had slapped V.C., “scratched at her head,” pulled her hair, and left her and her friend home alone one night. V.C. described seeing mother and maternal grandmother fight at least two times.

V.C. said father always checks on her, always covers her with a blanket when she is at his house, and puts music on while she sleeps. She liked living at paternal grandmother’s house and she was not using diapers there.

In a meeting with the parents and social worker on August 15, mother admitted that she had been under the influence while caring for V.C. The social worker asked the parents if they consented to V.C.’s detention or if they would like the social worker to seek a removal order from the juvenile court. Mother and father consented to detention. Father said he preferred not to have the Department and court intervene but he wanted whatever was in V.C.’s best interest. Mother stated she wanted to visit V.C. and would contact outpatient rehabilitation centers to obtain treatment.

On August 18, the Department filed a juvenile dependency petition alleging mother and father violated section 300, subdivisions (a) and (b)(1), because they had a “history of engaging in violent altercations in the child’s presence” and because, “[o]n prior occasions, the father choked the mother and struck the mother’s body in the child’s presence.” In addition, with respect to mother, the petition alleged:

- Mother had a history of substance abuse and was a current abuser of methamphetamine, amphetamine, and marijuana; had a positive toxicology screen for methamphetamine and amphetamine on August 2, 2017; and on prior occasions possessed, used, and was under the influence of illicit drugs while caring for and supervising V.C.
- Mother physically abused V.C. on prior occasions by hitting her face and pulling her hair.
- Mother had a history of violent and aggressive behavior, including hitting and scratching maternal grandmother’s face in V.C.’s presence, poking and throwing food at maternal grandmother’s face, pulling maternal grandmother’s hair, and hitting maternal grandmother with shoes and other objects in V.C.’s presence.

At the initial hearing on August 18, the juvenile court detained V.C. from mother and father and placed her with paternal grandmother. The court denied father’s request (which V.C. joined) for unmonitored visits and granted monitored visits.

On September 27, V.C. told a social worker that mother was abusive toward her. As V.C. spoke, she drew a picture of what appeared to be a crack pipe. V.C. said mother smoked this thing in the closet with her gangster boyfriend Willy and another guy

named Danny. At times, mother smoked something that smelled like skunk and caused V.C. to cough, preventing her from sleeping.

By September 27, father had visited V.C. four times at paternal grandmother's home in Visalia. Mother had not contacted the social worker so her visits had not begun.

At the adjudication on October 25, father's counsel asked the court to dismiss the domestic violence claims, arguing the only evidence supporting the claims was mother's statement that father once hit her. Counsel also argued mother and father had not been in a relationship for at least six years. Accordingly, counsel argued, there was no evidence of a current or ongoing risk that V.C. was being exposed to domestic violence.

The Department's counsel disagreed, arguing mother had reported she had a history of domestic violence with father. Counsel argued: "Also [i]n the Detention Report, page 4, mother states she has been choked by [father] in front of the minor" Counsel argued, "I believe mother's admission that the choking happened in minor's presence shows that the minor was placed at risk of physical harm. [¶] [¶] Here we have a direct admission by the mother stating the minor did witness the father physically abuse the mother and that a choking incident did occur in the minor's presence." Mother joined the Department's argument in favor of sustaining the domestic violence count against father.

Counsel for V.C. asked the court to dismiss the domestic violence count against father. V.C.'s counsel noted that, "[w]hile mother does indicate that there was this DV incident involving choking, it's not clear from the evidence when this happened. If they've been broken up for six years, it's safe to assume it

happened six years ago. My client is fairly young. She's only seven years old now. Even if this did happen six years ago, there's no current risk of harm to my client."

The juvenile court received exhibits in evidence, accepted mother's waiver of rights form, and sustained as amended the counts against mother involving drug use and physical abuse of V.C. under section 300, subdivision (b).

The court also sustained the domestic violence count against father under section 300, subdivision (b). The court explained its ruling was "based on the evidence before the court in the reports. The court does take very seriously and find[s] mother's statements credible in the report that states [¶] 'Mother states she has a history of domestic violence with [father], who hit her.' She stated she has been choked by him in front of her daughter." The court continued: "I think these are very serious allegations. I do find mother's statements credible. And choking is a level of domestic violence that I do believe presents a severity that would demonstrate by [a] preponderance of the evidence, especially because it was in front of the minor that there is substantial – that it is more likely than not under [section 300, subdivision] (b) that there is [a] risk of substantial serious physical harm." The court dismissed the remaining counts.

Regarding disposition, the Department recommended that father participate in random or on demand consecutive drug tests, parenting classes, and individual counseling to address case issues with a licensed therapist. Father's counsel objected, arguing there was no evidence that father was abusing drugs or that he needed parenting classes or individual counseling; to the contrary, counsel argued, father was the person who brought the matter to the Department's attention and he had acted

protectively. Father did not request custody of V.C. (See § 361.2, subd. (a).)

The juvenile court stated it was removing V.C. from her “parents” “pursuant to dependency court order 415.”⁴ The court

⁴ Dependency court order 415 is not contained in the record on appeal. The October 25, 2017 minute order states:

“The Court finds by clear and convincing evidence, pursuant to Welfare and Institutions Code sections 361(a)(1), 361(c), and 362(a), and additionally applying to noncustodial parent(s)/legal guardian(s) the constitutional and statutory safeguards available to custodial parents under Welfare and Institutions Code section 361(c) and to noncustodial parent(s)/legal guardian(s) under Welfare and Institutions code section 361.2, that:

“It is reasonable and necessary to remove the child from the parents, as such removal is defined in 45 CFR 1356.21(k)(1)(ii), and the care, custody, and control of the parent(s)/legal guardian(s) from whom the child is are [*sic*] being removed because there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child, and there are no reasonable means by which the child’s physical health can be protected, without removing the child from the home and the care, custody, and control of that or those parent(s)/legal guardian(s).

“The Court further finds that it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or the care, custody, and control of that or those parent(s)/legal guardian(s).

[¶] [¶]

“The Court orders the child removed from the home and the care, custody and control of the parent(s)/legal guardian(s) from whom the child is being removed and placed in the care, custody and control of the Department of Children and Family Services.”

ordered V.C. suitably placed and ordered father to participate in individual counseling to address case issues, including domestic violence, with a licensed therapist. The court denied father's and V.C.'s request that father have unmonitored visits and instead ordered monitored visits.

On November 27, 2017, Father filed a timely notice of appeal.

On May 2, 2018, while the appeal was pending, the juvenile court released V.C. to father's custody.⁵ The May 2 minute order stated that release of V.C. to father would not create a substantial risk of detriment to V.C.'s safety, protection, or physical or emotional well-being. V.C., however, remained under the court's jurisdiction and all orders not in conflict with the release order remained in full force and effect. The court scheduled a review hearing on October 17, 2018.⁶

DISCUSSION

I. Justiciability issues

A. V.C.'s release to father does not render the appeal moot

“As a general rule, it is a court's duty to decide ““actual controversies by a judgment which can be carried into effect, and

⁵ We granted the Department's request for judicial notice of the juvenile court's May 2, 2018 minute order. We did not receive any additional information explaining the circumstances of V.C.'s release to father.

⁶ We have received no information about the outcome of the October 17 hearing.

not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.””” (In re N.S. (2016) 245 Cal.App.4th 53, 58 (N.S.)) “An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief.” (Id. at pp. 58-59.)

Under the mootness doctrine, appellate courts regularly dismiss appeals in dependency cases when the dependency court terminates jurisdiction while the appeal is pending. (See, e.g., N.S., *supra*, 245 Cal.App.4th at pp. 56-57, 61 [dismissing mother’s appeal from juvenile court’s order sustaining dependency petition because, while appeal was pending, juvenile court dismissed the dependency proceedings, awarded custody of N.S. to mother, “and the jurisdictional findings are not the basis of any current order that is adverse to [mother]”]; *In re Michelle M.* (1992) 8 Cal.App.4th 326, 327-328, 330 [dismissing father’s appeal from jurisdictional and dispositional orders making children dependents of the court because, while appeal was pending, juvenile court terminated its jurisdiction].)

The Department argues father’s appeal is moot because on May 2, 2018, while his appeal was pending, the juvenile court released V.C. to father at the six-month review hearing (§ 366.21, subd. (e)) after finding release would not create a substantial risk of detriment to V.C.’s safety, protection, or physical or emotional well-being.

But the juvenile court did not terminate dependency jurisdiction on May 2. Instead, V.C. remained subject to the court’s jurisdiction, with a section 364 hearing scheduled for October 17, 2018. Nothing in the May 2 minute order indicates that the juvenile court relieved father of his obligation to

participate in individual counseling to address case issues including domestic violence. Rather, the minute order states that “[a]ll prior orders not in conflict shall remain in full force and effect.” Therefore, the jurisdictional finding against father continues to be the basis of an order that is adverse to him. (See *N.S.*, *supra*, 245 Cal.App.4th at p. 61.)

We conclude the juvenile court’s release of V.C. to father does not render the appeal moot.

B. The appeal is justiciable despite the unchallenged jurisdictional findings against mother

The Department argues “there is no need for this Court to address the father’s jurisdictional challenge” because “the grounds upon which jurisdiction was assumed concerning the mother have not been challenged” and “the juvenile court will still have jurisdiction regardless of the outcome of [father’s] appeal” Under the circumstances presented here, we exercise our discretion to review father’s jurisdictional challenge.

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).)

Nonetheless, reviewing courts have opted to exercise their discretion and “reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*))

In *Drake M.*, the father appealed from the juvenile court’s jurisdictional and dispositional findings but the mother did not. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 762.) The Department argued that reversal of the juvenile court’s findings against the father would have no practical impact on the dependency proceeding because the unchallenged findings against the mother would continue to support dependency jurisdiction. (*Ibid.*) The Court of Appeal disagreed, reasoning: “[T]he outcome of this appeal is the difference between father’s being an ‘offending’ parent versus a ‘non-offending’ parent. Such a distinction may have far reaching implications with respect to future dependency proceedings in this case and father’s parental rights.” (*Id.* at p. 763.) The Court of Appeal therefore reviewed the father’s appeal on the merits. (*Ibid.*)

Here too, appellate review of the juvenile court’s jurisdictional finding against father is appropriate because the finding made him an “offending” parent and resulted in an order that he participate in individual counseling to address case issues including domestic violence. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*) [exercising discretion to reach merits of mother’s challenge to juvenile court’s jurisdictional

findings because, inter alia, the findings “appear to have motivated the court’s order that mother address domestic violence in her individual counseling sessions and could potentially impact the current or future dependency proceedings”].)

II. The jurisdictional finding against father is not supported by substantial evidence

A. Standard of review

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.]” (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

“Substantial evidence is a deferential standard, but it is not toothless. It is well settled that the standard is not satisfied by pointing to “isolated evidence torn from the context of the whole record.” [Citations.] Rather, the evidence supporting the jurisdictional finding must be considered “in light of the whole record” ‘to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value’ [Citation.]” (*In re I.C.* (2018) 4 Cal.5th 869, 892, emphasis omitted.)

Although substantial evidence may consist of inferences, the inferences “must be “a product of logic and reason” and “must rest on the evidence” [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, emphasis omitted.)

B. Jurisdiction under section 300, subdivision (b)

A child comes within the jurisdiction of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . .” (§ 300, subd. (b)(1).) “The Department has the burden of proving by a preponderance of the evidence that . . . children are dependents of the court under section 300.” (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

“While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citation.]” (*M.W.*, *supra*, 238 Cal.App.4th at p. 1453, original emphasis.)

“Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b).” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; see *id.* at p. 944 [affirming jurisdictional finding under section 300, subdivision (b) where, inter alia, parents engaged in domestic violence in child’s presence].)

In *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*), the juvenile court sustained a count under section 300, subdivision (b) alleging the father choked the mother and pulled her hair. (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 715.) The Court of Appeal reversed, observing the children denied ever seeing the father physically abuse the mother and there was no evidence the alleged hair-pulling and choking incidents occurred in the children's presence. (*Id.* at p. 717.) "The physical violence between the parents happened at least two, and probably seven, years before the [Department] filed the petition. There was no evidence that any of the children were physically exposed to the past violence between their parents and no evidence of any ongoing violence between the parents who are now separated." (*Ibid.*) The evidence therefore was insufficient to support the juvenile court's finding that domestic violence between the parents placed the children at a current substantial risk of physical harm. (*Ibid.*; see *M.W.*, *supra*, 238 Cal.App.4th at p. 1455 [striking domestic violence count because "no substantial evidence connect[ed] the single domestic violence incident in 2007 . . . to a risk of current harm to the children" in 2014]; *In re Jesus M.* (2015) 235 Cal.App.4th 104, 113 (*Jesus M.*) [rejecting Department's argument that evidence of domestic violence supported section 300, subdivision (b) finding because, *inter alia*, "the parents had long been separated, the two incidents Mother could recall had occurred more than three years earlier, and there was no evidence of current violent behavior"].)

Thus, the risk of harm to the child must exist at the time of the jurisdictional hearing to establish jurisdiction under section 300, subdivision (b). (See *M.W.*, *supra*, 238 Cal.App.4th at p. 1453.) A child is at substantial risk of suffering serious physical

harm when she is exposed to domestic violence that is ongoing or likely to continue. (See *ibid.*; *Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.) But if the domestic violence is remote in time and not likely to recur, the risk of physical harm arising from it may no longer be substantial. (See *M.W.*, *supra*, 238 Cal.App.4th at p. 1455.)

To support its claim that father committed domestic violence against mother, the Department submitted only the following statements in its August 18, 2017 Detention Report: “Mother stated that she has a history of [domestic violence] with [father] who hit her. She stated that she has been choked in front of her daughter.” The Department also argues the juvenile court’s jurisdictional finding is supported by father’s statement that he and mother separated because mother was aggressive and father was afraid he would hit her.

It is undisputed, however, that mother and father ended their relationship in 2011. The Department presented no evidence that any domestic violence has taken place since 2011 or that, at the time of the October 2017 jurisdiction hearing, domestic violence involving the parents was ongoing or likely to continue. Mother’s reported statements, which do not specify when the violence occurred, do not support reasonable inferences that would carry the Department’s burden of proof on any of these points.

On this record, therefore, mother’s statements about domestic violence do not establish a substantial risk of serious physical harm to V.C. (See *Daisy H.*, *supra*, 192 Cal.App.4th at pp. 715, 717; *M.W.*, *supra*, 238 Cal.App.4th at p. 1455; *Jesus M.*, *supra*, 235 Cal.App.4th at p. 113.)

III. The detriment finding and individual counseling order

The juvenile court's detriment finding and individual counseling order are based on the jurisdictional finding against father. Because we are reversing the jurisdictional finding, the detriment finding and individual counseling order must also be reversed.

IV. The monitored visitation order

As noted, while the appeal was pending the juvenile court vacated the suitable placement order and released V.C. to father. As a result, father's appeal from the monitored visitation order is moot.

DISPOSITION

The juvenile court's jurisdictional and detriment findings against father and its individual counseling order are reversed. Father's appeal from the monitored visitation order is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.